

Powers of State Parliaments

State Constitutions are much more flexible than *Commonwealth Constitution*. The only limitation is that parliaments are not entitled to abolish themselves, they consist of a lower House of Assembly and upper Legislative Council.

s.2(2) *Australia Act*, grants all States parliament full legislative power. Furthermore, there is no extra-territorial limit as per s.2(1) *Australia Act* which was endorsed in the case of (*Union Steamship*) provided that a sufficient nexus exists. As per (*Broken Hill South*) the nexus requirement can be easily established.

Amendments can be made to the State Constitution in ordinary processes. Furthermore, there is no real substantive fetter on States legislative power as the wordings of '*for the peace, welfare and good government*' was enough to bestow power to legislative procedures as they were not words of limitations. With reference to (*Marquel*) and s.6 *Australia Act*, it was possible for the parliament to make valid restrictive procedures to make it harder for new parliament to make changes to law. Restrictive procedures can be enacted for laws made in respect to the 'constitution, procedural and powers' of parliament. It was held only procedural limits (not substantive) could be enacted.

Examples of valid restrictive procedures:

- a. Referendum
- b. Absolute Majority: 50%+1 (of all members of parliament incl. no shows)
- c. Special Majority: 50%+1 (of all members that show)

Constitutions Act 1975 (Vic) (What empowers parliament to make laws)

s.16 <i>Constitution Act 1975 (VIC)</i>	<u>The Parliament shall have power to make laws</u> in and for Victoria in all cases whatsoever
s.2(2) <i>Australia Act</i>	The legislative powers of the Parliament of each <u>state include all legislative powers</u> that the Parliament of the United Kingdom might have exercised before the commencement of this Act for the <u>peace, order and good government of that State ...</u>
s.15 <i>Constitution Act 1975 (VIC)</i>	The legislative power of the State of Victoria shall be vested in a Parliament, which shall consist of Her Majesty, the Council, and the Assembly, to be known as the Parliament of Victoria.

<i>Union Steamship Co v King (1988)</i>	King was a seaman employed by U.S. King developed boilermaker's deafness as a result of working and under s.46 <i>Workers Compensation Act 1926(NSW)</i> sought compensation. The <i>WC Act</i> purported to apply to claims for injury occurring on a ship anywhere in the world. However, under extraterritorial effect US argued it was not for the 'peace, welfare and good government of NSW'. Issue: Were the words, words of limitations?	The act was valid. The phrase was means to convey a general sense of promoting welfare of the community. The use of the wording has no special significances and was not a limiting formula . The state legislative power is plenary and there are no restrictions. There is a potential nexus requirement for legislating extraterritorial .
<i>Durham Holdings Pty Ltd v New South Wales (2001)</i>	<i>Coal Acquisition Act 1981 (NSW)</i> provided for compensation to be paid to certain land owners in NSW when coal was taken from their land. In 1990, his compensation was capped (have max amount), and certain landowners were denied full compensation. <i>S.51(31) of the Constitution (Cth)</i> say that acquisitions	Court held that there is no limit or restriction on the state legislative power, state can pass unjust laws. State has plenary power: state legislatures are empowered to limit

	<p>need to be on just terms. Landowners argued that it was unjust terms and that NSW parliament does not have power to enact laws authorizing acquisition of law without compensation.</p> <p>Issue: Does state have the power to acquire property on <i>unjust</i> terms? Is there a limit on the restraint in state legislative power?</p>	<p>common law rights, provided that legislation is sufficiently clear.</p> <ul style="list-style-type: none"> Courts cannot strike down state laws on the basis that they are bad policy, or infringe on fundamental rights and freedom. State has legislative power over compensation, including capping compensations.
<i>Kable v DDP (NSW) (1996)</i>	<p>Kable was convicted of manslaughter for killing his wife. He was violent in prison and wrote threatening letters to relatives of deceased wife. NSW government concerned of public safety, wanted to keep him in prison. NSW parliament wanted to pass an act that would further detain Kable in prison.</p> <p>Issue: Can parliament pass laws that permit imprisonment for reasons other than crime and one that fundamentally infringes on common law rights and whether the exercise of that legislative power is subject to some restraints.</p>	<p>The court held that the parliament can hold rights and override even the most fundamental common law rights through legislatives provided there is a clear intention to do so. The right to only be detained is not one that would be rejected on the bases of being unjust.</p>
<i>Pearce v Florenca & Broken Hill South</i>	<p>Extra Territorial s.2(1) <i>Australia Act</i></p> <p>States can make extra territorial laws as long as some nexus → generally, states have broad, wide-ranging power, and only limited by a few things</p> <p>E.g. sufficient nexus: domicile, residents, presences in the territory, carrying business in the territory.</p>	

- Changing State Constitutions
 - States have power to alter their own constitutions = “constituent” legislative power of states
 - Subject to a few restrictions, but easily amendable – possible to change entire constitutional structure, e.g. QLD
 - Plenary power in state constitutions is also “constituent” – can be used to change even State’s constitution
 - Restrictions to prevent accidental amendments – manner and form procedures – a way of passing laws
 - **McCawley’s Case:**
 - State constitutions “flexible” and “uncontrolled”: can be changed by ordinary legislation → advantageous but also dangers of inadvertent amendments

Executive Accountability

Courts:

- Judicial review, guardian of the constitution excuse that executive does not act ultra vires, a strict adherence to the constitution.

Parliament: (via the doctrine of responsible government)

- Parliament enacts the legislation that empowers and regulates the executive:
 - It has the ability to scrutinise and disallow delegated legislation
 - Parliamentary committees also take evidence from public officials
- Question time in parliament:
 - Question time is the most important mechanism by which Parliament can request information from the government and hold it to account for the implantation of its programs and policy decisions.
 - Non-government ministers ask questions of ministers to learn about their policy.
 - Members of the opposition ask ministers questions in a forceful way in order to voice their grievances.
 - Parliament also establishes independent scrutiny agencies under statute.
 - Inspector General of Intelligence Services
 - Senate estimate hearings:
 - Held 3X a year, inquiries into Executive spending are conducted in which public servants are required to answer for their spending and ministers for their policy costs.
 - Auditor-general:
 - Under the *Auditor General Act 1997 (Cth)* the AG assists the parliament in holding the executive into financial account.
 - AG ensure that spending is in accordance with appropriation bills.
 - AG also consider the effectiveness and efficient of government programs and whether the spending was valid.
 - Internal Mechanism: not bound by legality but being able to consider what is just and wise (morality).
 - Anti-Corruption: ICAC
 - Australian Human rights commission:
 - Investigate and resolve complaints of human right breaches.
 - Ombudsman:
 - Guaranteed tenure of 7 years, they resolve and investigate grievances about the government and make recommendations to improve the quality of public administrations. However, they cannot criticise policy decisions (*Booth v Dillion No 2*)
 - Tribunals:
 - Resolve disputes between citizens and the executive over its actions. In reviewing executive decisions, they may offer a change in what occurred or compensatory award. Cheap and can rewrite decisions.
 - Royal commissions:
 - Executive power to call for a large independent commission to respond to an issue. Recommendations are not binding and will often be seen as a delay tactic. Never used by the executive to check itself. Costly and lengthy process.

Advantages:	Disadvantages:
<ul style="list-style-type: none"> • Commissioner is generally a former judge, or of equivalent seniority, integrity and independence. • Can summon witnesses and take evidences, warrant etc: transparency and fairness. 	<ul style="list-style-type: none"> • The Government may not act upon the advice and recommendations. • Delay in tactic